YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*

**"My Children have Defeated Me"**

**Fundamental questions in the study of the Oral Law**

**Rav Amnon Bazak**

**Shiur #06: Chapter Two (I)**

**Sinaitic Tradition or Theoretical Analysis**

**I. Introductions**

In the previous chapter, we discussed the antiquity of the Oral Law: the existence of an Oral Law that preceded the revelation at Mount Sinai, and the expansion and development of that law during the period of the prophets and of the return to Tzion. Nevertheless, there remains a significant gap between the Oral Law as we know it from *Chazal*, with all its components and details, and the laws and statutes known to us from Scripture. Hundreds and thousands of laws appearing in the literature of *Chazal* are not explicitly mentioned in the Bible.

In this chapter we will examine whether it is possible to define and characterize what of the Oral Law is part of the Torah that was given to Moshe at Sinai and what portion of the material came to us through some other mechanism. In other words, we will address a most fundamental question relating to the whole essence of the Oral Law: Are we talking about with a tradition that originated in heaven, or is it perhaps more about theoretical analysis, based on how Torah scholars understood the Torah over the course of generations?[[1]](#footnote-1)

This question does not pertain to rabbinic decrees (*mi-derabbanan*), which obviously were created by *Chazal*, through their insights; it is rather about the laws that are defined and perceived as Torah laws (*mi-de'oraita*), with all the significance of the term. We will later examine the concepts of "rabbinic decrees" and "Torah laws" in greater detail. At this point, we will stick to the conventional definition and emphasize that our question relates to those laws that are "from the Torah": Are they derived from a tradition from Sinai, or were they created by our Sages across the generations based on their understanding of the Written Law?

**II. Two Approaches in the Midrash?**

We will first consider *Chazal's* stance on this question. In a general sense, it may be noted that different *midrashim* imply different, and seemingly contradictory, positions regarding the question of what was given to Moshe at Sinai and what was left to human discretion. On the one hand, many *midrashim* indicate that all of the Oral Law was given to Moshe at Sinai. Thus, for example, when the Torah states, "These are the statutes and the ordinances and the laws, which the Lord made between Him and the children of Israel at Mount Sinai by the hand of Moshe" (*Vayikra* 26:46), it is explained:

"The statutes" – these are the *midrashim*; "and the ordinances" – these are the laws; "and the laws" – this teaches that two Laws were given to Israel, one in writing and one orally… "at Mount Sinai by the hand of Moshe" – this teaches that the Torah, its laws, its particulars, and its explanations were given by way of Moshe at Sinai. (*Torat Kohanim*, *Bechukotai*, *parasha* 2, 8, 112c)

This Midrash explicitly states that in addition to the Written Law, Moshe gave the people of Israel an Oral Law from Sinai, which includes "its laws, its particulars, and its explanations."

Elsewhere, in reference to the verse, "And the Lord said to Moshe: Come up to Me to the mount and be there; and I will give you the tablets of stone, and the law and the commandment, which I have written, that you may teach them" (*Shemot* 24:12), it is stated:

Rabbi Levi bar Chama says further in the name of Rabbi Shimon ben Lakish: What is the meaning of the verse: "And I will give you the tablets of stone, and the law and the commandment, which I have written, that you may teach them"? "The tablets" – these are the Ten Commandments; "the law" – this is Scripture; "which I have written" – these are the Prophets and the Writings; "that you may teach them" – this is the Talmud. This teaches that they were all given to Moshe at Sinai. (*Berakhot* 5a)

These *midrashim* seem to give the impression that the entire Oral Law, including all that would later appear in the Mishna and in the Talmud, was given to Moshe at Sinai. According to this approach, *Chazal* did not create new laws with their expositions, but merely transmitted the tradition they had received.

In many other *midrashim*, however, we find a different approach, according to which Moshe did not receive the entire Torah at Sinai, and therefore there is room for the Sages to create laws over and beyond those that Moshe had received. Thus, for example, the Midrash asks:

Did Moshe learn the entire Torah? It is written in the Torah:[[2]](#footnote-2) "The measure thereof is longer than the earth, and broader than the sea" (*Iyov* 11:9), and Moshe learned it in forty days?

The Midrash could have answered: Indeed, Moshe Rabbeinu was able to learn the entire Torah in forty days. But the Midrash apparently related to Moshe as a regular person with ordinary human abilities, and therefore it would have been impossible for him to learn the entire Torah with all its particulars and minutiae in only forty days. Therefore, the Midrash preferred to explain what Moshe learned at Sinai in a different manner:

Rather, the Holy One, blessed be He, taught Moshe the general principles [*kelalim*]. This is [the meaning of]: "When he had made an end [*ke-kaloto*][[3]](#footnote-3) of speaking to him" (*Shemot* 31:18). (*Shemot Rabba*, *parasha* 41, 6)

According to this approach, Moshe learned at Sinai only the general principles of the Torah, but the details were not given to him, and there was no tradition about them. In light of this, we can understand another Midrash: "Rabban Yochanan ben Zakkai went out and left, and Rabbi Eliezer sat and expounded **more than what was told to Moshe at Sinai**" (*Avot de-Rabbi Natan*, version 2, chap. 13, ed. Schechter p. 32). If in fact only the general principles were transmitted to Moshe at Sinai, it is not surprising that later Torah scholars could expound more than what had been told to Moshe at Sinai.

How are we to understand the relationship between the various *midrashim* that seem to express two contradictory approaches?

It can be argued that there is indeed disagreement between the two approaches in *Chazal*: Some maintain that the Oral Law in its entirety was given to Moshe at Sinai, with all its particulars and minutiae, while others maintain that only the general principles were given at Sinai.

Indeed, there are some *Rishonim* whose words imply that in fact all of the details of the laws familiar to us from *Chazal* were transmitted by way of a tradition from Moshe Rabbeinu. Thus, for example, writes Rabbeinu Chananel (in his commentary to *Pesachim* 38b): "All of the matters spelled out in the Mishna are laws that were transmitted to Moshe at Sinai, even if they are taught without attribution"[[4]](#footnote-4) – though it is possible that he is referring specifically to what is stated in the Mishna, and not to other sources in *Chazal.* Rabbi Avraham ben Daud ("the first Ra'avad")[[5]](#footnote-5) writes more comprehensively at the beginning of *Sefer Ha-kabbala*: "All the words of our Rabbis, the Sages of the Mishna and of the Talmud, all of them were received by tradition, one great and righteous Sage from the mouth of another great and righteous Sage… from the members of the *Kenneset Ha-gedola*, who received them from the prophets… The Sages of the Talmud, and all the more so the Sages of the Mishna, never said even a trivial matter on their own, except for the enactments that they instituted… in order to erect a fence around the Torah." The Ralbag follows this approach in the introduction to his commentary to the Torah: "But they were received, one person from another, going back to Moshe Rabbeinu, and they sought an allusion to them in Scripture."

However, after studying the sources in the literature of *Chazal*, and especially the two Talmuds, it is difficult to accept this position in its plain sense, that all of the details of the *mitzvot* reached the Tannaim and the Amoraim by way of a tradition that was transmitted to Moshe at Sinai. Only on rare occasions does the Gemara reach the conclusion that a particular position falls into the category of a "law that was transmitted to Moshe at Sinai" or a tradition. In most Talmudic passages, the law under discussion seems to stem from analysis of the verses or from logical thinking, and in cases where there is a disagreement between different opinions, the Gemara usually attributes it to a disagreement about how to expound the text, about the logic, or about both matters together.

The Gemara asks hundreds of times about the derivation of a particular law, using formulations such as: "From where are these words [derived]?" and in the vast majority of cases, the law is derived from a verse. For instance, the Mishna in *Kiddushin* (1:7) states, "And all negative precepts, whether bound by time or not bound by time, are incumbent upon both men and women"; the Gemara (*Kiddushin* 35a) asks, "From where are these words [derived]?" and answers by quoting, "When a man or a woman shall commit any sin that men commit" (*Bamidbar* 5:6), from which it learns that "Scripture likened a woman to a man with respect to all the punishments in the Torah."[[6]](#footnote-6) In the vast majority of passages containing such a question, the reply is based on a derivation from a verse, and not on any kind of tradition regarding the particular law.

Similarly, in many passages dealing with a Tannaitic dispute, the Gemara asks: "Regarding what do they disagree?" and then clarifies that the Tannaim disagree about a matter of logic or about the analysis of the verses, without raising the possibility that the controversy stems from a dispute about a tradition. In one of many examples, the Gemara discusses a Tannaitic dispute that relates to a fundamental question about the laws governing witnesses: Must the two witnesses in a monetary case testify about an event, such as a loan, that they witnessed together, or does it suffice that each witness testify that the one party lent a certain sum to the other, even if they each testify that the loan was carried out on a different day:

For it has been taught: The evidence of witnesses cannot be combined, unless they simultaneously saw what they state in evidence. Rabbi Yehoshua ben Korcha said: Evidence is valid even if they witnessed it consecutively. (*Sanhedrin* 30a)

The Gemara discusses the basis of their disagreement, and offers two possibilities: either they disagree on a point of logic, or they disagree about how to understand the verses:

About what do they disagree? If you wish, I might say, in the interpretation of a Biblical verse; alternatively, in a matter of logic.[[7]](#footnote-7)

The Gemara does not even raise the possibility that the controversy is related to a tradition. This example represents the vast majority of Talmudic passages dealing with disputes among the Sages.

Only in rare cases do we find the Gemara arguing that a particular law is based not on a verse, but on a tradition. Thus, we find, for example, regarding the law of "impurity of the deep": a grave that nobody knew existed when a particular person contracted impurity from it (its existence was only determined later). The law is that it is not considered impurity with respect to a Nazirite or one bringing a Paschal offering. The Gemara (*Pesachim* 81b) initially proposes several sources for this law, such as from the verse, "And if any man die very suddenly beside him" (*Bamidbar* 6:9), which indicates that there is impurity only when it is "quite clear beside him," but not when it is unknown to him. However, the Gemara then has difficulty understanding a law brought in a *baraita*: "What is impurity of the deep? Wherever not even a person at the end of the world had been aware of it. If a person at the end of the world had been aware of it, it is not impurity of the deep." This law is incomprehensible according to the proposed derivation, which hangs the exemption on the knowledge of the person who contracted the impurity, nor can it be understood according to the other derivations brought in the Gemara. Therefore, the Gemara concludes: "Rather the impurity of the deep is known as a traditional law, while the verse is a mere support." That is to say, this law falls into the category of laws handed down by way of tradition,[[8]](#footnote-8) and the textual derivations are merely Scriptural verses used as support.[[9]](#footnote-9) Since the law is not based on the derivation from the verse, it applies even in cases where it would not have applied had it actually been derived solely from the verse.

As stated, such cases are clearly exceptional. In general, the Tannaim and the Amoraim based their halakhic positions on midrashic expositions or on logic, and not on a tradition from Sinai.

We must now try to understand the meaning of those *midrashim*, cited above, from which it would appear that "the Torah, its laws, its particulars, and its explanations were given by way of Moshe at Sinai." If in fact all the details of the laws were given to Moshe at Sinai, why didn't the Sages in their many discussions base their positions on these traditions?

(Translated by David Strauss)

1. This issue has been discussed at length in many sources. Among other works, Prof. Shalom Rosenberg's *Lo ba-Shamayim Hi – Torah she-be-Al Peh Masoret ve-Chidush* (Alon Shevut 5778) is devoted to this topic. For a broad and detailed examination of the issue, impressive in its scope and sources, see Rav Sh. Ariel’s book, *Nata be-Tokheinu – Perakim bi-Yesodot Torah she-be-Al* *Peh*, Part I *– Masoret ve-Yetzira*, Otniel 5778. [↑](#footnote-ref-1)
2. "It is written in the Torah [*ba-Torah*]": "*Ba-Torah*"in the sense of: On, or about, the Torah; that is to say, the verse in *Iyov* is expounded as referring to the Torah. [↑](#footnote-ref-2)
3. According to its plain meaning, the word "*ke-kaloto*" denotes "end [*kelaya*]," but the Midrash expounds it in the sense of "principle [*kelal*]." [↑](#footnote-ref-3)
4. "Even if they are taught without attribution" – that is to say: Even though they are reported anonymously, one should not say that they are not obligatory; rather, they fall into the category of laws transmitted to Moshe at Sinai. [↑](#footnote-ref-4)
5. Rabbi Avraham ben Daud was one of the great Jewish authorities of twelfth century Spain. The designation "the first Ra'avad" is used to distinguish him from Rabbi Avraham Av Beit Din, author of the *Eshkol* ("the second Ra'avad"), and from the latter’s son-in-law, Rabbi Avraham ben David, who wrote objections on the Rambam ("the third Ra'avad"). *Sefer Ha-kabbala* is one of the most important works of Jewish history from the period of the *Rishonim*, and it served as the basis for many Jewish historians who came after him. In addition to this book, "the first Ra'avad" also authored the philosophical text, *Emuna Rama*. [↑](#footnote-ref-5)
6. The Gemara there brings additional sources, and afterwards explains why all of these derivations are necessary and why one of them alone would not have sufficed. [↑](#footnote-ref-6)
7. Explanation of the disagreement as a dispute in logic: According to the anonymous first Tanna, the two witnesses are not testifying about the same event ("the [loan of the] *maneh* to which the one testifies, is not attested by the other, and vice versa"); whereas according to Rabbi Yehoshua ben Korcha, it suffices that they both testify that the one owes money to the other ("they both testify to a *maneh* in general"). Explanation of the disagreement as a dispute about how to understand the text: According to the anonymous first Tanna, the singular term "witness," in the verse "And he is a witness whether he has seen or known of it" (*Vayikra* 5:1), implies that while two witnesses are required, they must see the event together as one; whereas according to Rabbi Yehoshua ben Korcha, it suffices that they both know of it. [↑](#footnote-ref-7)
8. Later in this chapter (section VI) we will clarify more precisely the meaning of the phrase "known as a traditional law" ("*hilkheta gemiri la*"). [↑](#footnote-ref-8)
9. In the next chapter (section VI) we will clarify more precisely the concept of a "mere support" ("*asmakhta*"). [↑](#footnote-ref-9)